1942.

File No. O Trade Dispute 42

Legal DEPARTMENT
"A" BRANCH

Subject:—

S.R.C. 4/6

Opinions under the Trade Dispute Act, 1929.

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File No. O Trade Dispute/42

Std. Sectt. Slip 24 B e.

297-A

~~CONFIDENTIAL~~

Legal Department File No. 0. Trade Dispute /42.

S.No.	Comp. No.	Subject	Pages
		Opinions under the Trade Disputes Act, 1929.	
1.	O.No.1956/28-2-42	Whether members of the subordinate and inferior services in Govt. offices fall within the definition of the expression "Workman" in Section 2(K) of the Act.	1-2
2.	O.No.2033/2-4-42.	1) Whether the dispute can be treated as a "Trade dispute" as defined in Sec.2(J) of the Act. 2) Whether the employees on whose behalf the application has been made fall within the meaning of the term "Workman "as defined in Sec. 2(K).	3-6
3.	O.No.6617/11-8-42	Re. Definition of "Trade dispute" as used in the Act.	7-8.

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A.N.D. 7-9-42 D.S

Office of the R.L.A.

The question for the consideration of the Remembrancer of Legal Affairs is whether members of the subordinate and inferior services in Government offices x fall within the definition of the expression "workmen" in section 2(k) of the Trade Disputes Act, 1929.

2. The Trade Disputes Act, 1929, as stated in its preamble provides for a machine y for the investigation and set lement of trade disputes. "Trade disputes" as defined in section 2(j) means any dispute or difference between employers and employem or between employers and workemen or between workmen and ~~xxxxxx~~ workmen which is connected with t e employmen or non-employment or the terms of employment, or with the conditions of labour or of any person. "Employer", as defined in sectio 2(c) in the case of any industry busines or undertak ng carried on by any department of any Government in British India, means the authority prescribed in this behalf or, where no authority is prescribed, the head of the department. "Work man" as defined in section 2(k) means any person employed in any trade or industry to do any skilled or unskilled manual or clerical work for hire or reward etc.but does not include any person employed in naval military or air service of the Crown. "Trade" means exchange of commodities for money or other commodities, or commerce, as foreign trade or domestic or home trade, and "industr means a branch of trade or manufacture (see the Concise Oxford Enhlish Dictionary). It is therefore clear that Government servants cannot be considered to be "workmen" within the meaning of section 2(k) of the Trade Disputes Act unless such servants are employed in any commercial or industrial underataking of Government.

O.C. Id/-P.N.M.
dt/-27/2/
Remembrancer of Legal Affairs.

U.R. to P.& S.D. No. 1856, dated the 28th February 1942.

V.VK.
7-3-56.

40°

Submitted.

The questions for the R.L.A.'s consideration are:-

(1) Whether the dispute can be treated as a trade dispute " as defined in Section 2(j) of the Trade Disputes Act, 1929; and

(2) Whether the employees on whose behalf the application has been made fall within the meaning of the term "workman" as defined in Sec. 2(k) of the Act.

2. "Trade dispute" as defined in Sec. 2(j) of the Trade Disputed Act, 1929, means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour of any person. The term "employers" as defined in Sec-2(c) does not appear to be exhaustive and applies to any industry, business or undertaking carried on by any Deptt. of any Govt. in British India. "Employer" in its ordinary sense means one who employs; one who engages or keeps men in service one who uses or engages the services of other persons for pay or salary (p.387 of Iver's Law Lexicon o Br. India) . "Workman " as defined in Sec2(k) means any person employed in any trade or industry to do any skilled or unskilled manual or clerical work for hire or reward, and includes for the

purposes of any proceedings under this Act in relation to a trade dispute a workman discharged during that dispute but does not include any person employed in the naval, military or air service of the Crown. One of the definitions of "trade" as given by Webster is the business a man has learned by which he earns his livelihood . Trade means the business of of buying and selling, or dealing by way of sale or exchange; bargain the exchange of commodities for other commodities or for money. The leading idea in trade is that of carrying on business for purposes of gain (p.129) of Iyer's Law Lexicon). "Industry" means any department or branch of art, occupation or business conducted as a means of livelihood or for profit, especially one which employs much labour or capital and is a distinct branch of trade (vide p.956 of Black's Legal Dictionery). It is clear, therefore, that the Municipal employees, except those who are employed by the Municipalit, in an, commercial or industrial undertaking, cannot be considered to be "workmen " within the meaning of Sec.2(k) of the Act(Cf.R.L.A.'s No.1856 dated 28-2-42).

Sd/-E.P.Bhamgara
dt/-9/3/

A.S.

The attention of the P.& S.D. is invited to R.L.A.'s recent opinion No. 1586, dated the 28th Feb. 1942. "Municipal corporations are designed for no other end but to welfare of the public and

especially of the com unities where they are established; and to this end their functi ns must be exercised "(see Aiyangar's Municipal Corporati ns in British India, p.28). Sec.61 of the City of Bombay Municipality Act, 1888, prescribes the obligatory duties of the corporation whereas sec.63 specifies its discretionary duties. None of these duties relate to its engagement in any"trade or industry". None of the employe s of the Bombay Corp ration can therefore be said to be employed in any trade or ind stry. Consequentl these employees are not workmen within the meaning of Sec.2(k) of the Trade Disputes Act, 1929.

Id/-R.F.D.
dt/-9/3

D.S.
I argu.

ID/-B.N.S.
dt/-19/3/42/

R.L.A. R.M.M.

ID/-P.N.M.
dt/-28/3/

U.R. to P.& C.D. No. 2083 , dt. 2-4-42.

V.VK.
~~7/5/1956~~/

4C.

Office of the R.L.A.

In the Trade Disputes Act, 1929,"trade dispute" is defined as any dispute or difference between employers and employers, between employees and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, or any person. It is true that "conditions of labour" is a very wide term but it does not seem that everything which is connected with trade dispute. The connection, it seems, must not be too remote and the matter must be of some substance. E.G. the thatching of a urinal . The urinal really seems too petty. It is possible that the relations between employers and employees might be such that the thatching of the urinal might become the cause of a strike and in that case the thatching would have to be treated as a trade dispute. But that would be an exceptional case. Again , recognition of a trade union does not appear to be directly enough connected with the condition of employment to become a matter of trade dispute. Recognition of the union might result in the improvemnt of conditions of labour. But that is speculation. Ordinarily there must be something more directly connected with those conditions, some more concrete grievance, before it can be a matter of trade dispute. No doubt much would depend on the circumstances of each dispute. Further, due weight must be given to the words "dispute or difference" mere statement of the employees demands will not make them matters of a trade dispute or difference. Nor will an unvoiced feeling of grievance nor even a mere grumbling . There must be something that can be properly termed a dispute or difference.Further the dispute or difference must have existed at some state before there is a reference to arbitration. From this point of view it seems that some of the items in the present list of matters of trade disputes have not really been in dispute at all but are sought to be made the subject matter of dispute s in those proceedings. The R.L.A. cannot weed out these items from this point of view as he does not know the history of the trade relations between the parties concerned.